IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 25TH OCTOBER 2007 / 3RD KARTHIKA 1929

Crl.Rev.Pet.No. 3817 of 2007()

CRA.573/2005 of SESSIONS COURT, THRISSUR
C.C..645/2002 of JUDL. MAGISTRATE OF FIRST CLASS COURT, KODUNGALLUR

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REVN. PETITIONER: 1ST APPELLANT/1ST ACCUSED

DHANAPALAN, S/O VELAYUDHAN,
APPOZHATH HOUSE, ELTHURUTH, METHALA.

BY ADV. SRI.P.SANTHOSH (PODUVAL)
SMT.R.RAJITHA

RESPONDENTS: RESPONDENT/COMPLAINANT

THE STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 25/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 3817 OF 2007

Dated this the 25th day of October, 2007

O R D E R

The revision petitioner was the first accused in C.C.No.645/02 on the file of JFCM, Kodungallur. He along with two others were charge sheeted by the Sub Inspector of Police, Kodungallur in Crime No.371/02 for offences punishable under sections 323 and 324 read with section 34 IPC.

2. The case of the prosecution can be summarised as follows:-

On 19.6.02 at 7.15 p.m. in the premises of Subramania temple at Elthuruth the accused persons in furtherance of their common intention voluntarily caused hurt to PW1 by A1 hitting him with an iron block and A2 and A3 fisting him with bare hands. The accused have thereby committed offences punishable under sections 323 and 324 read with section 34 IPC.

3. On the accused pleading not guilty to the charge framed against them by the trial court for the aforementioned offences, the prosecution was permitted to adduce evidence in support of its case. The prosecution altogether examined 8 witnesses as PWs 1 to 8 and got marked 4 documents as Exts.P1

to P4. The accused did not adduce any defence evidence when called upon to do so.

4. The learned Magistrate after trial, as per judgment dated 17.6.05 found all the three accused persons guilty of not only the offences charged against them but also of the offence punishable under section 341 IPC. For the conviction under section 323 IPC, each of the accused was sentenced to simple imprisonment for one month, for the conviction under section 324 IPC, each of the accused was sentenced to simple imprisonment for one year and for the conviction under section 341 IPC, each of the accused was sentenced to simple imprisonment for one month. The sentences were directed to run concurrently. On appeal preferred by the three accused persons as Crl.Appeal No.573/05 before the Sessions Court, Thrissur, the Sessions Judge, as per judgment dated 13.8.07 acquitted A2 and A3 of all the offences and acquitted all the accused of the offences punishable under sections 323 and 341 IPC but sustained the conviction and sentence passed against A1(the revision petitioner) for the offence punishable under section 324 IPC. It is the said judgment which is assailed in this revision filed by the first accused.

5. Eventhough the learned counsel appearing for the revision petitioner challenged the conviction of the revision petitioner on various grounds, the conviction has been entered against the revision petitioner after a careful evaluation of the oral and documentary evidence in the case. It was the revision petitioner who had hit PW1 with an iron block causing lacerated injuries and contusions on his face. The trial court which had the unique advantage of seeing the witnesses and assessing their credibility was inclined to accept the testimony of PWs 1 and 2. In the absence of any infirmity in the appreciation of evidence by the lower appellate court, this court sitting in revision will be loathe to interfere with the conviction recorded against the revision petitioner. The conviction is accordingly confirmed.

6. What now survives for consideration is the question as to the legality or otherwise of the sentence imposed on the revision petitioner. Eventhough there is evidence to show that it was the revision petitioner who hit PW1 with an iron block, the testimony of PW2, one of the witnesses, goes to show that the altercation between the accused and PW1 started in connection with the first accused figuring as a witness against PW1 in court and it was PW1 who picked up a quarrel with the first accused

over the said issue. The scene of occurrence is on the bank of a temple pond from where the wordy altercation between PW1 and the accused resulted in a scuffle culminating in PW1 sustaining the injuries. Having regard to the facts and circumstances of the case, I do not think that the revision petitioner deserves penal servitude by way of incarceration. I am of the view that interests of justice will be adequately met by imposing an appropriate fine for the conviction under section 324 IPC. Accordingly, the sentence imposed on the revision petitioner is set aside and instead, he is sentenced to pay a fine of Rs.5,000/- (Rupees five thousand only) for the conviction under section 324 IPC. The fine amount shall be deposited within one month from today, failing which he shall suffer simple imprisonment for two months by way of default sentence. Out of the fine amount as and when realised, a sum of Rs.3,000/- (Rupees three thousand only) shall be paid to PW1 by way of compensation under section 357(1) Cr.P.C.

In the result, this revision is disposed of confirming the conviction but altering the sentence as above.

(V. RAMKUMAR, JUDGE)

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